

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA**

UNITED STATES OF AMERICA.

**Plaintiff,**

FERNANDO BELTRAN-BASTIDAS,

Defendant.

Crim. Case No. 07CR2591 WQH  
Civil Case No. 08CV2119 WOH

## ORDER

HAYES, Judge:

The matter before the Court is the motion for reduction of term of imprisonment under Title 18 U.S.C. § 3582 (Doc. # 23) filed by the Defendant.

On February 26, 2008, this Court sentenced the Defendant to be imprisoned for a term of 30 months for bringing in illegal aliens without presentation in violation of 8 U.S.C. § 1324.

Defendant moves the Court under Title 18 U.S.C. § 3582 for a time served sentence reduction on the grounds that 1) the United States Attorney General can offer up to a two level reduction of the sentence if a Defendant accepts a final deportation order and 2) as an alien he is deprived of benefits and/or privileges afforded to United States citizen inmates.

18 U.S.C. § 3582(c) provides in relevant part that “[t]he court may not modify a term of imprisonment once it has been imposed except that - (1) in any case ... (B) the court may modify an imposed term of imprisonment to the extent otherwise expressly permitted by statute

1 or by Rule 35 of the Federal Rules of Criminal Procedure."

2 There are no grounds upon which to modify Defendant's sentence pursuant to Rule 35.  
3 This Court has no authority to order Defendant's sentence reduced at this stage in the  
4 proceedings. The Sentencing Reform Act gives the Bureau of Prisons the responsibility to  
5 "designate the place of the prisoner's imprisonment." 18 U.S.C. § 3621(b). *See United States*  
6 *v. Cubillos*, 91 F.3d 1342, 1344-45 (9th Cir. 1996). The Court of Appeals for the Ninth Circuit  
7 has rejected the assertion that an alien's equal protection rights are violated when he cannot  
8 be housed in a minimum security facility or a community correction center based upon his  
9 deportation status. *See McClean v. Crabtree*, 173 F.3d 1176, 1185-86 (9th Cir. 1999). There  
10 are no grounds upon which this Court would reduce Defendant's sentence.

11 IT IS HEREBY ORDERED that the motion for reduction of term of imprisonment  
12 under Title 18 U.S.C. § 3582 (Doc. # 23) is DENIED.

13 DATED: December 5, 2008

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15 WILLIAM Q. HAYES  
16 United States District Judge

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